

Oglala Lakota Nation

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Secretarial Commission on Indian Trust Administration and Reform
through

Ms. Lizzie Marsters

Chief of Staff to the Deputy Secretary

via: trustcommission@ios.doi.gov

Department of the Interior

1849 C Street NW, Room 6118

Washington, DC 20240

Dear Ms. Marsters;

The trust relationship between the United States and Native Nations is largely based on Indian treaties. In order for the trust relationship to be meaningful and effective, and for the government-to-government relationship to be maintained, treaties and the obligations they create must be understood. These are not new obligations but commitments the United States has made to Native Nations time and again – to honor Indian treaties.

Our treaties are old. Old or not, our treaties and the rights and promises made within them are sacred and profound. They are the moral and legal commitments and promises made between sovereign nations. These promises must not be forgotten; they must be reaffirmed and strengthened. Our leaders negotiated treaties to secure a future for our people. Today, we must rely on the trust responsibility and the federal government to meet many of the needs of our people. This is so, in large part, because the federal government made treaties with us, promising protection, goods, and services, but then failed to carry out its treaty obligations to our people.

Treaties are binding agreements between sovereign nations. This is acknowledged in United States law. The Supremacy Clause of the Federal Constitution provides that the Constitution, federal laws, and treaties “shall be the supreme Law of the land”. This principle must be considered in strengthening the trust responsibility. The U.S. Supreme Court said that a treaty is not a grant of rights to Indians, but a grant of rights from them, and that rights are not lost until tribes expressly give them up. The Supreme Court is not a very good authority about Indian treaties, in my opinion, but this point is a good one.

Federal courts have laid out important rules for interpreting treaties. First, treaty language should be interpreted as Indians would have understood it. Second, ambiguous provisions should be interpreted in favor of the Indians. Lastly, treaties should be construed liberally in favor of the Indians. The reason for these rules is clear: we negotiated treaties with an understanding, based on our language, based on our teachings, that treaty provisions were lasting and enduring commitments. Because treaties were recorded in the English language, this concept has been severely overlooked by the federal government. We must not forget this.

There is a very recent and very important development the Trust Commission should consider; that is the United Nations Declaration on the Rights of Indigenous Peoples. Even though the Declaration does not mention "trust," it contains many articles that support the trust relationship. Observing and enforcing treaties is one of the most important ways the United States must meet its trust obligations. The Declaration says that: "Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honor and respect such treaties, agreements and other constructive arrangements." The United States has publically announced that it supports the Declaration, and President Obama said: "What matters far more than words ... are actions to match those words." Recognition of our treaty rights is one way the United States can begin to act on its spoken commitment to the Declaration and its trust responsibility.

There are many other articles in the Declaration that must be a part of the trust responsibility. Several articles recognize our rights to our lands, territories, and resources (Art. 26), and the right to be secure and not forcibly removed from our homeland (Art. 10). Other articles affirm our right to our sacred places and property (Arts. 11, 12, 25). Many articles recognize our right of well-being, to enjoy "the highest attainable standard of physical and mental health" (Art. 24). We have a right of self-determination and the right to financial support to put self-determination into practice. Article 39 recognizes that enforcement of our rights requires funding and support from the federal government. The Declaration is very near to what we believe the trust responsibility should be, particularly its recognition of our treaty rights.

The United States has already committed itself to trust responsibilities in our treaties. Our treaties speak broadly about a relationship with the United States based on peace, friendship, and protection. Our treaties promise specific substantive rights, entitlements, and material goods. The Treaty with the Sioune and Oglala of 1825 provides that the United States receive the Sioux "into their friendship, and under their protection, and to extend to them, from time to time, such benefits and acts of kindness as may be convenient, and seem just and proper to the President of the United States" (Art. 2). The Treaty of Fort Laramie of 1851 provides that the United States "bind themselves to protect ... Indian nations against the commission of all depredations by [private citizens] ..." (Art. 3). The Fort Laramie Treaty of 1868 guarantees that the Sioux Nation shall be undisturbed in their use and occupation of their permanent homeland. The Treaty further provides that no later treaty for the sale of the guaranteed territory shall be of any validity "unless executed and signed by at least three-fourths of all the adult male Indians ..." (Art. 12).

Our treaties are not fleeting promises. As we understand treaties, in our language, they are enduring and lasting commitments. We were not *given* any rights; these were sacrifices and promises we made to secure our future and ensure that certain rights would be protected, forever. They must be read in light of this. For instance, as written in the English language, the treaties set out some specific commitments such as the building of a warehouse, store-room, and a physician's residence, mandatory education, the employing of a physician, teachers, carpenter, miller, engineer, farmer, and blacksmiths, and tools for farming. Our Lakota people interpret the treaties more broadly to mean something much different. In the spirit of the treaty, the federal government has committed to the trust responsibility and is obligated to provide for our well-being along the lines mentioned in the treaty.

Clearly, the English language failed to encompass our understanding of the agreements in the treaties; we have always viewed treaties as adaptable and expansive. Based on our treaties and the general trust responsibility, the United States is obligated to provide our people with a good education, decent medical care, infrastructure and utilities, and assistance for economic development. These are some of our most important needs today. This is how we view our treaties, and to a certain extent, United States law has also recognized this with its interpretive principles.

The Treaty of 1868 remains a set of valid promises and legal and moral obligations of the United States to the Lakota people and others as well. However, Congress violated the Treaty in a major way when it passed the Act of February 28, 1877, confiscating the sacred Black Hills. The Supreme Court later held that the 1877 Act was an illegal taking of our property, as guaranteed by the Treaty. By the time of the decision, however, tremendous damage had been done. Due to the vast loss of land and encroachment on almost every aspect of life, we experience some of the harshest conditions of reservation life known in the country. Few Nations or communities have suffered as much as we have as a result of the wrongdoings by the federal government. These wrongs continue to affect our people in very serious ways today, including contributing to a lack of adequate medical care, housing, education, food, and job opportunities.

The trust obligations also grow out of, and they continue today, because of the tremendous wrongs and injustices that have been committed against us. These wrongs and the suffering they cause are continuing even today, and that is why it is absolutely necessary and overwhelmingly important that the United States reaffirm and truly fulfill its trust obligations. Congress has many times stated that the United States has extensive obligations as trustee, and nothing has occurred to reduce or diminish those obligations. Congress must fully fund all trust responsibilities and programs. Only with adequate funding can the Department of the Interior and other departments carry out their duties as trustee.

We hear from many people that the United States wants to "get out of the trust business." This would be a terrible thing for our Oglala Lakota people, because it would mean that we would lose much of what we have now and many people would suffer even more from lack of adequate food, housing, medical care, education, and other needs. We often find that when government people speak of changes in policies and programs that affect us, it usually means a change for the worse – that the government will do even less to meet its trust obligations. The United States needs to do much more – not less – to satisfy its trust responsibilities and to live up to the promises made in the treaties. We have nowhere else to turn. We cannot replace or do without the programs and services that the federal government provides as trustee. We do not have a casino that is successful enough to make us rich or meet many basic needs, even though we are trying hard. If the United States reduces or fails in its trust obligations, then we simply suffer even more. That would be morally and legally wrong. That would be a further violation of the treaties.

Do not speak of changing the treaties. If you want to talk about the treaties, then the United States leaders must come and sit with me and our other leaders. We can discuss the meaning of the treaties and how those obligations can be met. We should also discuss how the United States can correct its violations of the treaties and its taking of our lands, especially our sacred sites.

Sometimes the United States claims that it has power as trustee to actually violate the treaties made with our Nations. The federal government said in one case that it has the power as trustee to take our land and sell it without our consent. This makes no sense. We never gave the federal government any such power, and our treaties say that we will be undisturbed on our lands. We want to see that there is a strong trust relationship, but we do not agree that the trustee can take our lands or control our Nations or do other things that violate our treaty agreements.

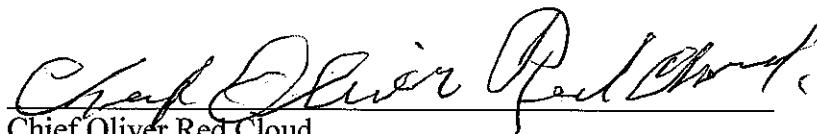
I believe that there should be an easy to use process for dealing with problems and complaints about trust obligations. The court procedures that we have to use now do not work well. Most of the time there is nothing that can be done in the courts, or the courts treat us unfairly. There must be a way to do something about problems concerning trust obligations without going to court. Our Lakota leaders and other Native leaders could talk with federal officials to work out a good system for doing something practical when there are problems with trust obligations or trust programs.

When we do have to go to the federal courts about violations of trust responsibilities, we often find that the courts won't take the case. The United States laws don't allow many kinds of trust cases to be decided by the courts. I believe Congress needs to make new laws that would allow all kinds of trust cases to be handled in the courts, if going to court is necessary. Otherwise, there are many cases where treaties are violated and the trust obligations are ignored, but we can do nothing about it. The federal government has an obligation to provide a legal remedy in court when the trust relationship is violated.

These are the main points I would like to make at this time. There is much more that needs to be said, and I intend to make further statements and recommendations to the Commission in the future. Thank you for this opportunity.

Signed:

BLACK HILLS SIOUX NATION TREATY COUNCIL

A handwritten signature in cursive script, reading "Chief Oliver Red Cloud". The signature is written in dark ink and is positioned above the printed name.

Chief Oliver Red Cloud
Traditional Headman
Oglala Band